

ORIGINAL

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

2011 AUG 10 PM 2:41
DEPUTY CLERK *CB*

UNITED STATES OF AMERICA

v.

HERSCHEL A. BREIG (01)
JAMES CHEEK (02)

§
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§
§
§
§

No.

5-11CR0049-C

INDICTMENT

The Grand Jury Charges:

Introduction

At all times relevant to this indictment:

1. The Internal Revenue Code required employers to pay to the United States of America the employer's share of Federal Insurance Contribution Act taxes (also called "FICA" and "social security" taxes) and Medicare taxes owing on wages paid to employees.
2. The Internal Revenue Code also required employers to: 1) withhold from the wages of their employees the employees' share of FICA taxes, Medicare taxes, and income taxes; 2) to account for those taxes; and 3) to pay the withheld amounts over to the United States.
3. A person was responsible for collecting, accounting for, and paying over to

the United States the FICA, Medicare, and income taxes described in paragraphs 1 and 2 above if that person had the authority to exercise significant control over the employer's financial affairs, regardless of whether the individual exercised such control in fact.

4. A person willfully violated the duty to collect, account for, and pay over FICA, Medicare, and income taxes if the person knew of the duty and voluntarily and intentionally violated that duty.

5. Highland Medical Center was a corporation doing business in Lubbock, Texas, which is within the Lubbock Division of the Northern District of Texas. Highland Medical Center was in the business of providing medical services, and it was an employer engaged in interstate commerce and in industries and activities affecting interstate commerce.

6. In or about March 2006, defendants **Herschel A. Breig** and **James Cheek** acquired control of Highland Medical Center. Highland Medical Center was purchased by an entity known as Shiloh Health Services, which involved other individuals but it was essentially controlled by defendants **Breig** and **Cheek**. **Cheek** served as the founder, Chief Executive Officer, and President of Shiloh Health Services. **Breig** served as the Vice-President and Secretary of Shiloh Health Services.

7. Beginning in or about March 2006, and continuing until in or about May 2008, defendant **Cheek** acted as Highland Medical Center's CEO. Defendant **Cheek** exercised control over every aspect of Highland Medical Center's business affairs,

including approving all payments by the company and controlling all of Highland Medical Center's bank accounts.

8. Beginning in or about March 2006, and continuing until in or about May 2008, defendant **Breig** acted as Highland Medical Center's Senior Vice-President of Cash Management. Defendant **Breig** exercised control over Highland Medical Center's financial business affairs, including the payment of taxes owed by Highland Medical Center.

9. During the period March 2006 through May 2008, defendants **Cheek** and **Breig** caused Highland Medical Center to make thousands of dollars of expenditures for the defendants' personal benefit while, at the same time, failing to pay over to the United States payroll taxes withheld from Highland Medical Center's employees' paychecks and, further, failing to remit monies withheld from Highland Medical Center's employees' paychecks for various employee benefits, including health insurance, dental coverage, and group life insurance.

Employment Tax Withholding

10. At all times relevant to this indictment, Highland Medical Center withheld taxes from its employees' paychecks, including federal income taxes, Medicare, and Social Security taxes. These taxes will be referred to in this indictment collectively as "payroll taxes."

11. Highland Medical Center was required to make deposits of payroll taxes to

the Internal Revenue Service on a periodic basis. In addition, Highland Medical Center was required to file, following the end of each calendar quarter, an Employer's Quarterly Federal Income Tax Return (Form 941), setting forth the total amount of wages and other compensation subject to withholding, the total amount of income tax withheld, the total amount of Social Security and Medicare taxes due, and the total tax deposits.

12. As CEO of Highland Medical Center, defendant **Cheek** was a "responsible person," that is, he had the corporate responsibility to collect, truthfully account for, and pay over Highland Medical Center's payroll taxes.

13. As Senior Vice-President of Cash Management of Highland Medical Center and the person responsible for the financial aspects of Highland Medical Center, defendant **Breig** was a "responsible person," that is, he had the corporate responsibility to collect, truthfully account for, and pay over Highland Medical Center's payroll taxes to the Internal Revenue Service.

14. Throughout the calendar years 2006, 2007, and 2008, Highland Medical Center withheld payroll taxes from its employees' paychecks. However, beginning in December 2006 and continuing through May 2008, Highland Medical Center made no payments to the Internal Revenue Service.

15. Altogether, during the seven calendar quarters alleged in Counts 1-7 of this indictment, Highland Medical Center failed to pay over approximately \$1,856,529 in payroll taxes, as set forth below:

Fourth Quarter of 2006	\$137,564
First Quarter of 2007	\$306,940
Second Quarter of 2007	\$337,470
Third Quarter of 2007	\$280,377
Fourth Quarter of 2007	\$300,099
First Quarter of 2008	\$267,562
Second Quarter of 2008	\$226,517

Count One

Failure to Pay Over Payroll Tax and Aiding and Abetting
(26 U.S.C. § 7202; 18 U.S.C. § 2)

1. The Grand Jury adopts and realleges the allegations set forth in paragraphs 1-15 of the introduction as if fully set forth herein.
2. Between on or about October 1, 2006, and on or about January 31, 2007, in the Northern District of Texas and elsewhere, the defendants, **Herschel A. Breig** and **James Cheek**, who were the responsible parties for Highland Medical Center, which during the fourth quarter of 2006, ending December 31, 2006, deducted and collected from the total taxable wages of the employees of Highland Medical Center, federal income taxes, Federal Insurance Contributions Act taxes, and Medicare taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes withheld as well as all Federal Insurance Contributions Act taxes and Medicare taxes due and owing to the United States of America for the said quarter ending December 31, 2006, in the approximate amount of \$137,564.00.

In violation of Title 26, United States Code, Section 7202, and Title 18, United States Code, Section 2.

Count Two

Failure to Pay Over Payroll Tax and Aiding and Abetting
(26 U.S.C. § 7202; 18 U.S.C. § 2)

1. The Grand Jury adopts and realleges the allegations set forth in paragraphs 1-15 of the introduction as if fully set forth herein.
2. Between on or about January 1, 2007, and on or about April 30, 2007, in the Northern District of Texas and elsewhere, the defendants, **Herschel A. Breig** and **James Cheek**, who were the responsible parties for Highland Medical Center, which during the first quarter of 2007, ending March 31, 2007, deducted and collected from the total taxable wages of the employees of Highland Medical Center, federal income taxes, Federal Insurance Contributions Act taxes, and Medicare taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes withheld as well as all Federal Insurance Contributions Act taxes and Medicare taxes due and owing to the United States of America for the said quarter ending March 31, 2007, in the approximate amount of \$306,940.00.

In violation of Title 26, United States Code, Section 7202, and Title 18, United States Code, Section 2.

Count Three

Failure to Pay Over Payroll Tax and Aiding and Abetting
(26 U.S.C. § 7202; 18 U.S.C. § 2)

1. The Grand Jury adopts and realleges the allegations set forth in paragraphs 1-15 of the introduction as if fully set forth herein.

2. Between on or about April 1, 2007, and on or about July 31, 2007, in the Northern District of Texas and elsewhere, the defendants, **Herschel A. Breig** and **James Cheek**, who were the responsible parties for Highland Medical Center, which during the second quarter of 2007, ending June 30, 2007, deducted and collected from the total taxable wages of the employees of Highland Medical Center, federal income taxes, Federal Insurance Contributions Act taxes, and Medicare taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes withheld as well as all Federal Insurance Contributions Act taxes and Medicare taxes due and owing to the United States of America for the said quarter ending June 30, 2007, in the approximate amount of \$337,470.00.

In violation of Title 26, United States Code, Section 7202, and Title 18, United States Code, Section 2.

Count Four

Failure to Pay Over Payroll Tax and Aiding and Abetting
(26 U.S.C. § 7202; 18 U.S.C. § 2)

1. The Grand Jury adopts and realleges the allegations set forth in paragraphs 1-15 of the introduction as if fully set forth herein.
2. Between on or about July 1, 2007, and on or about October 31, 2007, in the Northern District of Texas and elsewhere, the defendants, **Herschel A. Breig** and **James Cheek**, who were the responsible parties for Highland Medical Center, which during the third quarter of 2007, ending September 30, 2007, deducted and collected from the total taxable wages of the employees of Highland Medical Center, federal income taxes, Federal Insurance Contributions Act taxes, and Medicare taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes withheld as well as all Federal Insurance Contributions Act taxes and Medicare taxes due and owing to the United States of America for the said quarter ending September 30, 2007, in the approximate amount of \$280,377.00.

In violation of Title 26, United States Code, Section 7202, and Title 18, United States Code, Section 2.

Count Five

Failure to Pay Over Payroll Tax and Aiding and Abetting
(26 U.S.C. § 7202; 18 U.S.C. § 2)

1. The Grand Jury adopts and realleges the allegations set forth in paragraphs 1-15 of the introduction as if fully set forth herein.
2. Between on or about October 1, 2007, and on or about December 31, 2007, in the Northern District of Texas and elsewhere, the defendants, **Herschel A. Breig** and **James Cheek**, who were the responsible parties for Highland Medical Center, which during the fourth quarter of 2007, ending December 31, 2007, deducted and collected from the total taxable wages of the employees of Highland Medical Center, federal income taxes, Federal Insurance Contributions Act taxes, and Medicare taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes withheld as well as all Federal Insurance Contributions Act taxes and Medicare taxes due and owing to the United States of America for the said quarter ending December 31, 2007, in the approximate amount of \$300,099.00.

In violation of Title 26, United States Code, Section 7202, and Title 18, United States Code, Section 2.

Count Six

Failure to Pay Over Payroll Tax and Aiding and Abetting
(26 U.S.C. § 7202; 18 U.S.C. § 2)

1. The Grand Jury adopts and realleges the allegations set forth in paragraphs 1-15 of the introduction as if fully set forth herein.
2. Between on or about January 1, 2008, and on or about April 30, 2008, in the Northern District of Texas and elsewhere, the defendants, **Herschel A. Breig** and **James Cheek**, who were the responsible parties for Highland Medical Center, which during the first quarter of 2008, ending March 31, 2008, deducted and collected from the total taxable wages of the employees of Highland Medical Center, federal income taxes, Federal Insurance Contributions Act taxes, and Medicare taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes withheld as well as all Federal Insurance Contributions Act taxes and Medicare taxes due and owing to the United States of America for the said quarter ending March 31, 2008, in the approximate amount of \$267,562.00.

In violation of Title 26, United States Code, Section 7202, and Title 18, United States Code, Section 2.

Count Seven

Failure to Pay Over Payroll Tax and Aiding and Abetting
(26 U.S.C. § 7202; 18 U.S.C. § 2)

1. The Grand Jury adopts and realleges the allegations set forth in paragraphs 1-15 of the introduction as if fully set forth herein.

2. Between on or about April 1, 2008, and on or about July 31, 2008, in the Northern District of Texas and elsewhere, the defendants, **Herschel A. Breig** and **James Cheek**, who were the responsible parties for Highland Medical Center, which during the second quarter of 2008, ending June 30, 2008, deducted and collected from the total taxable wages of the employees of Highland Medical Center, federal income taxes, Federal Insurance Contributions Act taxes, and Medicare taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes withheld as well as all Federal Insurance Contributions Act taxes and Medicare taxes due and owing to the United States of America for the said quarter ending June 30, 2008, in the approximate amount of \$226,517.00.

In violation of Title 26, United States Code, Section 7202, and Title 18, United States Code, Section 2.

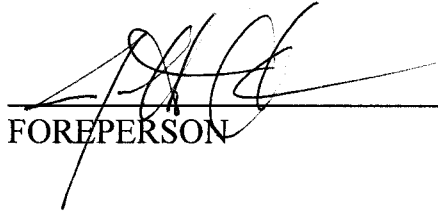
Count Eight

Theft or Embezzlement in Connection With Health Care
(18 U.S.C. § 669)

Beginning in or about April 2007, and continuing to in or about June 2008, in the Lubbock Division of the Northern District of Texas, and elsewhere, defendants, **Herschel A. Breig and James Cheek**, knowingly and willfully embezzled, stole, and without authority converted to the use of a person other than the rightful owner, and intentionally misapplied approximately \$135,079.83 of the moneys, funds, securities, premiums, credits, property, and other assets of a health care benefit program, that is, the Shiloh Health Services, Inc. Medical and Drug Plans, in that the defendants did not forward and remit the Plan's coverage premiums, which had been withheld from employees' pay for the express purpose of obtaining health care coverage, to Great-West Healthcare, the third-party administrator for the Plans, thereby causing the Plans to be terminated in or about December 2007, with defendants continuing to deduct such premiums from the employees' pay, even though the Plans had been terminated, until in or about June 2008.


In violation of Title 18, United States Code, Section 669.

A TRUE BILL:



FOREPERSON

JAMES T. JACKS
UNITED STATES ATTORNEY



ANN C. ROBERTS
Assistant United States Attorney
Texas State Bar No. 24032102
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401
Telephone: 806.472.7397
Facsimile: 806.472.7324
Email: ann.roberts@usdoj.gov

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

THE UNITED STATES OF AMERICA

v.

HERSCHEL A. BREIG (01)
JAMES CHEEK (02)

INDICTMENT

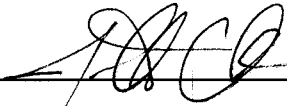
26 U.S.C. § 7202; 18 U.S.C. § 2
Failure to Pay Over Payroll Tax and Aiding and Abetting

18 U.S.C. § 669
Theft or Embezzlement in Connection With Health Care

(8 COUNTS)

A true bill rendered:

Lubbock

 Foreperson

Filed in open court this 10th day of August, A.D. 2011.

Clerk

SUMMONS TO ISSUE AS TO EACH DEFENDANT


UNITED STATES MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**
Related Case Information
1. Defendant Information

 Juvenile: ☐ Yes ☒ No

If Yes, Matter to be sealed:

☐ Yes ☐ No

 Superseding: ☐ Yes ☒ No New Defendant: ☐ Yes ☐ No
 Indictment/Information ☐ Yes ☒ No If Yes, number:
 Pending CR Case in NDTX: ☐ Yes ☒ No If Yes, number:
 Search Warrant Case Number _____
 R 20 from District of _____

Please Issue Summons

 Defendant Name HERSCHEL A. BREIG

Alias Name

Address

REDACTED
5-11CR0049-C

 County in which offense was committed: **LUBBOCK**
2. U.S. Attorney Information

 AUSA Ann C. Roberts

 Bar # 24032102
3. Interpreter
☐ Yes ☒ No If Yes, list language and/or dialect:

4. Location Status

Arrest Date _____

☐ Already in Federal Custody
☐ Already in State Custody
☐ On Pretrial Release

ON BOND
5. U.S.C. Citations

 Total # of Counts as to This Defendant: 8 ☐ Petty ☐ Misdemeanor ☒ Felony
Citation **Description of Offense Charged** **Count(s)**

26 U.S.C. § 7202; 18 U.S.C. § 2 Failure to Pay Over Payroll Tax and Aiding and Abetting 1-7

18 U.S.C. § 669 Theft or Embezzlement in Connection With Health Care 8

 Date 08/10/11

Signature of AUSA:


 ANN C. ROBERTS

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

Related Case Information

1. Defendant Information

Juvenile: ☐ Yes ☒ No

If Yes, Matter to be sealed:

☐ Yes ☐ No

Superseding: ☐ Yes ☒ No New Defendant: ☐ Yes ☐ No
Indictment/Information ☐ Yes ☒ No If Yes, number:
Pending CR Case in NDTX: ☐ Yes ☒ No If Yes, number:
Search Warrant Case Number _____

R 20 from District of _____

Please Issue Summons

Defendant Name JAMES CHEEK

Alias Name

Address

5-11CR0049-C

REDACTED

County in which offense was committed: **LUBBOCK**

2. U.S. Attorney Information

AUSA Ann C. Roberts

Bar # 24032102

3. Interpreter

☐ Yes ☒ No If Yes, list language and/or dialect:

4. Location Status

Arrest Date _____

- ☐ Already in Federal Custody
☐ Already in State Custody
☐ On Pretrial Release

ON BOND

5. U.S.C. Citations

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Citation **Description of Offense Charged** **Count(s)**

26 U.S.C. § 7202; 18 U.S.C. § 2 Failure to Pay Over Payroll Tax and Aiding and Abetting 1-7

18 U.S.C. § 669 Theft or Embezzlement in Connection With Health Care 8

Date 08/10/11

Signature of AUSA:

Ann C. Roberts

ANN C. ROBERTS